**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION.**

**CRIMINAL APPEAL NO. 895 OF 2002**

Vikas Ramdas Khairnar Patil )
Age 26 years, Student )
Residing at Popular Nagar )
D-7 Flat No.16, Warje Malwadi)
Pune. ) ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

.....

Shri V.R.Manohar Senior counsel with M.S.Mohite & Mrs. Chandana Radia for the appellant.

Mrs. P.H. Kantharia APP for the State.

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**CORAM ; V.G.PALSHIKAR &**
**SMT. NISHITA MHATRE, JJ.**

**DATED; 13TH JUNE, 2005**

**ORAL JUDGMENT ( PER PALSHIKAR, J.);**

1. Being aggrieved by the judgment dated 17-06-2002 passed by the Additional Sessions Judge, Pune in Sessions Case No. 491 of 1998, the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned

APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is led on the record before the Additional Sessions Judge.

3. The prosecution story stated briefly is that the accused no.1 Sunil was married to victim Nisha on 26th May 1997 at Jalgaon. After marriage the couple lived in flat which was on the 4th floor at D-7, bearing No.16, Warje Malwadi, Pune. The brother of the husband Sunil by name Vikas was also staying with them at Pune in the same flat. Sunil and Vikas are sons of Ramdas Patil who is in service and is resident of Jalgaon. The relations of Vikas and his sister-in-law Nisha were not very cordial and they used to quarrel on petty matters. It is also alleged by the prosecution that Sunil was harrasasing Nisha for money.

4. On 6th June 1998 between 8 and 8.30 p.m. Sunil came home and knocked the door of the flat as Nisha was supposed to be in the house. Since persistent knocking did not get any response Sunil opened the door of the flat by his latch key and entered the flat to find that the house was in disarray and Nisha lay on the floor in severely injured condition and immobile state. Sunil therefore shouted. Neighbours gathered. It was

revealed that Nisha died and therefore Sunil filed a complaint in the police-station, informing police about the manner in which he discovered the dead body and expressing suspicion that the assault may have been committed by his brother Vikas. On the basis of this information, investigation was carried out and accused Vikas who is present appellant along with Sunil the complainant and husband of the deceased Nisha, and the father and mother of Vikas and Sunil were prosecuted for causing murder of Nisha in the evening of 6th June 1998 in flat No.16 between 7.30 and 8 p.m.

5. The prosecution examined 22 witnesses to prove its case. The defence examined 3 witnesses claiming that the accused were not responsible for the death. The learned trial Judge on appreciation of the evidence on record came to the conclusion that the murder was committed by Vikas the present appellant. The learned Judge accordingly convicted the present appellant to suffer imprisonment for life and acquitted the husband Sunil and the parents-in-law i.e. parents of Sunil and Vikas of all the charges. The above appeal is directed against the order of conviction recorded by the learned trial Judge convicting Vilas for murder of Nisha. As already observed above, we have reappreciated the entire evidence, we have scrutinised the entire

records. The contentions raised on behalf of the appellants stated briefly are that:

*1. The entire case is based on circumstantial evidence and the chain of circumstances is not complete at all and therefore the order of conviction is unsustainable in law.*

*2. The evidence of handwriting expert is very weak evidence, which is required to be corroborated for acceptance by a court of law and therefore in the evidence as it stands on record conviction based solely on that opinion is unsustainable in law.*

*3. The prosecution has failed to prove the presence of the accused Vikas in Pune in the vicinity of their house where the murder as is alleged to have taken place particularly when there is evidence on record to point out that accused Vikas left Pune around noon on 6th June 1998.*

*4. Without prejudice to several other contentions raised, even if the prosecution*

*evidence in its entirety is accepted, it does not prove the complicity of Vikas in the death of Nisha and therefore the judgment of conviction of Vikas alone is unsustainable in law.*

*5. Without prejudice to these contentions, it was observed further that even if the entire prosecution evidence is accepted, then it becomes probable that homicidal death of Nisha was caused either by Sunil or by Vikas as according to the prosecution both were in the town and both had access to the house and consequently having chosen to acquit Sunil on the said set of circumstances, the learned Judge committed error of law in convicting accused Vikas alone for murder.*

6. These contentions raised by Shri V.R.Manohar the learned Senior Advocate for the appellant were strongly contested by the learned A.P.P. appearing on behalf of the State, who pointed out from the evidence, the circumstances, which according to her proved the complicity of Vikas alone in the murder and therefore claimed that the order of conviction was liable to be sustained. According to the learned A.P.P. appearing

for the prosecution, the prosecution has successfully proved beyond doubt that the homicidal death of Nisha was caused by Vikas only. According to her the circumstantial evidence was complete, Vikas had the motive and therefore availed of the opportunity and killed Nisha in the evening of 6th June 1998. We have to appreciate these rival contentions in the light of the evidence as we have reappreciated with the able assistance of both the prosecutor and the defence advocate.

7. The prosecution has examined as many as 22 witnesses to prove its case. PWs 1 to 3 are relations of the victim who speak of cruelty and dowry demands by the accused persons. None of them was eye witness. Their evidence is therefore restricted to previous demands and certain facts and circumstances noticed by them after the knowledge of death was acquired.

8. PW 4 is the witness to the seizure of clothes of the deceased. PW 5 is the panch witness to the seizure of knives and other articles from the scene of offence. P.w.6 is the witness to the arrest panchanama. P.w.7 is the panch in whose presence specimen handwriting of accused Vikas was taken.

9. P.w.8 is the panch witness in whose presence clothes of the accused were seized. P.w.9 is Surekha mother of deceased Nisha who speaks of illtreatment by both Sunil and Vikas to her daughter Nisha. P.w.10 Anthony is a bank employee has proved payment of certain money to Nisha. P.w.11 Dr. Raj is the doctor who conducted post mortem on the dead body of Nisha and has reported that the death was caused because of several stab injuries.

10. P.w.12 Kumar Damodar Deshmukh is an employee of Pune Telephone Exchange. He has deposed that as per the records of the department two telephone calls from the house of victim were made at 7.35 in the evening and immediately thereafter to Jalgaon and Bhusaval. The numbers to which the telephone calls were made are also stated. He has also deposed that in view of the call at Bhusaval at 19.40 hours the telephone was working till then. The call at Jalgaon having been and at 19.35 hours the call at Jalgaon according him, therefore was prior in time. His evidence goes to show that after that call to Jalgaon was terminated, fresh call to Bhusaval was made.

11. P.w.13 Bhalchandra is the Assistant State Examiner of Documents being handwriting and finger print expert.

He has deposed that the handwriting in the red diary in Hindi is of accused Vikas. It is basically on the testimony of this witness the conviction is ordered by the learned trial Judge. We will advert to his evidence in detail at a later stage.

12. P.w.14 Balasaheb is the witness who states that on 6th june 1998 at about 8.30 p.m. his wife received a telephone call from complainant Gajanan P.w.1 from Jalgaon expressing some danger to the life of Nisha. This witness resides in Pune. He was told to go to the house of victim and verify the factual position. He accordingly reached there and informed P.w.1 regarding the injuries caused to Nisha and her hospitalisation.

13. P.w.15 is one Pramod Patil who has deposed that accused Ramdas, father of accused Vikas is his maternal uncle (mama). He has deposed that on 8th June 1998 his parents had gone to Bhusaval as they had received a call regarding critical condition of Nisha and while giving the message they told the witness that accused Vikas had been to their house in the morning of 8th June. P.w.16 is Sudhir brother of accused Sunil and Vikas. He was declared hostile. However at the cross examination by the prosecution, he deposed that the impugned handwriting in Hindi i.e. "mai Vikas khoon

karke bhag reha hum" was not of Vikas. P.w.17 is Dr. Shabana who is also declared hostile who probably was examined for certain treatment taken by the accused Vikas. P.w.18 Ranjeet is administrative officer of the A.I.S.S.P.M.S. Engineering College, Pune, who on 6th June 1998 issued a certificate to Vikas, being a bonafide student of college to enable Vikas to obtain admission in the hostel. He has deposed that the certificate was given around 11.30 in the morning of 6th June 1998.

14. P.w.19 Yatin is a news paper distributing boy. He has stated that on 6th June around 7.15 p.m. he went to the building where these accused were residing to collect the bill and rang the door bell of the house of Sunil when it was opened by a male person and he was told that Sunil was not at home. He therefore returned back. P.w.20 P.I. Vishwas Chougule is the investigation officer who conducted the investigation in crime No.257/98 and has deposed about the entire investigation as conducted by him. P.w.21 Sarjerao is a police officer, who was witness to the alleged statement by the accused that he would show the place where he has thrown the clothes at Nashik. Then police accordingly went there but no clothes were noticed.

15. P.w.22 is Ashok Rinagi who was PSI at the relevant time and he accompanied Sunil to his flat when he came to know the fact that Nisha is in an injured condition and is admitted in the hospital. He has deposed as to how he went to the flat, how the lock of the house was opened by accused Sunil, how he had seen the diary in the hall. He posted a police guard at the place, he recorded complaint of Sunil and has proved it in the court.

16. Then there is evidence of the defence witnesses, who says that they knew the accused and accused Vikas had come to the witness and had received a telephone call at 2 p.m. informing him that he was likely to shift. He has also deposed that around 7.30 he received a call from Nisha informing him that she was assaulted by armed persons and witness should inform her father-in-law. He also deposed that he was told by Nisha that the accused Sunil and Vikas were not at home at that time. This witness lives in Bhusaval and accused 3 and 4 live in Bhusaval and the claim of this witness is that around 7.40 on 6th June, he received a call from Nisha requiring him to inform the parents-in-law i.e. accused 3 and 4 regarding the assault on her by some armed persons. The 2nd witness examined by the defence is Chandrakant who saw accused

Sunil and Vikas leaving the house around 9.30 in the morning of 6th June 1998. The third witness is Vidya who deposed that she saw the accused Sunil leaving along with Vikas on the stair case. The 4th witness is employer of accused Sunil. This therefore is the entire evidence on appreciation of which the learned trial Judge found the accused Vikas alone guilty. Having found that there was no evidence against accused 1,3 and 4 they came to be acquitted. It is this order, which is impugned in this appeal on the ground as mentioned above by us.

17. It will thus be seen that the entire case rests on circumstantial evidence only. There are no eye witnesses and the conviction rests solely on the testimony of P.w.13 the handwriting expert and the learned trial Judge has on the same set of evidence acquitted accused no.1 Sunil and accused nos.3 and 4 parents of Sunil and Vikas. The conviction of Vikas is thus based basically on the evidence of P.w.13 and other circumstantial evidence as is accepted by the learned trial Judge. It will therefore be necessary to note what can easily be termed as settled law on appreciation of evidence for recording conviction for an offence based solely on circumstantial evidence.

18. The Supreme Court has observed in **AIR 1952 S.C. 343** in relation to appreciaiton of circumstantial evidence as under:

> **(b) Criminal P.C. (1898), S. 367 - Appreciation of evidence - Circumstantial evidence - Duty of Court.**
>
> **In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof. In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.**

19. It will thus be seen that right since independence the Supreme Court has laid emphasis on the fact that there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and the circumstantial evidence must be satisfied as to show that within all human probability the act must have been done by the accused.

20. Then following the judgment in **AIR 1952 S.C. 343** quoted above, another constitutional Bench of the Supreme Court of India held in relation to circumstantial evidence as under:

> **Evidence Act (1872) S.3 - Circumstantial evidence - Facts established should be consistent only with hypothesis of guilt- Hypothesis must be reasonable - (Criminal P.C. (1898) S. 367)**
>
> **In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. AIR 1952 SC 343 followed.**
>
> **The principle that the inculpatory fact must be inconsistent with the innocence of the accused and incapable of explanation on any other hypothesis than that of guilt does not mean that any extravagant hypothesis would be sufficient to sustain the principle, but that the hypothesis suggested must be reasonable.**

21. The Supreme Court has in the abovequoted case has re-iterated in 1960 the principle that the chain of evidence must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show

that within all human probability the act must have been done by the accused.

22. We need not note each judgment of the Supreme Court of India where these principles have been meticulously folowed as will be evident from a judgment of the Division Bench of the Supreme Court of India reported in **AIR 1979 SC page 826** where the Dviision Bench observed thus:

> **(B) Evidence (1 of 1872) S.3-Circulantial evidence -Sufficiency of to prove guilt - (Criminal P.C. 2 of 1974) S.354).**
>
> **In cases depending on circumstantial evidence, there is always the danger that conjecture or suspicion may take the place of legal proof.**
>
> **The circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused, AIR 1952 SC 343, AIR 1952 SC 354, AIR 1967 SC 520 Foll.**
>
> **The principle that inculpatory fact must be inconsistent with the innocence of the accused and incapable of explanation on any other hypothesis than that of guilt does not mean that any extravagant hypothesis would be sufficient to sustain the principle, but that**

**the hypothesis suggested must be reasonable. AIR 1960 29 Foll.**

23. In order to sustain the conviction on circumstantial evidence, it is therefore necessary for the prosecution to prove that there is no reasonable ground existing which is consistent with the innocence of the accused and to show that within all human probability the murder is committed by the accused Vikas only.

24. Then there is a judgment of the Supreme Court of India reported in **AIR 2003 S.C. 3601** to demonstrate that the rule or rule of law settled by the Supreme Court of India consistently was the same, 50 years after the first judgment in 1952 was delivered by the Supreme Court of India. (AIR 1952 SC page 343). In para 9, it is observed by the Supreme Court of India that:

**Where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstancces are found to be incompatible** with the innocence of the accused or the **guilt of any other person.**"

25. The Supreme Court of India then has quoted several decisions of the Supreme Court of India itself to observe that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the

circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt. Then the Division Bench proceeds to note subsequent decision in para 10, 11, 12 to 45 that the view as taken by the Supreme Court in 1952 is consistently followed. Then it quotes in para 15 from decision reported in AIR 1952 SC 343. Then in para 16 it refers to the decision in Sharad Birdhichand Sarda's case AIR 1984 SC 1622 and quotes the conditions which must be fulfilled for accepting the circumstantial evidence as adequate for convicting a person for an offence on the basis of circumstantial evidence only.

It then proceeds to analyse the case in hand.

26. Then there are two decisions given by the SuprememCourt of India but no notice in the 2003 judgment. One is reported in **AIR 1981 (2) SCC page 35** delivered by three Honourable Judges of the Supreme Court led by the then Chief Justice Y.V.Chandrachud

where the Supreme Court has observed thus:

> **" In a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In the test as to whether the cumulative effect of the circumstances establishes the guilt of the accused beyond the 'shadow of doubt', the 'shadow of doubt', even in cases which depend on direct evidence, is shadow of 'reasonsbale' doubt. Secondly, in its practical application, the test which**

> requires the exclusion of other alternative hypothesis is far more rigorous than the test of proof beyond reasonable doubt."

Here the Supreme Court has observed regarding citation of every precedent on the point of appreciation of circumstantial evidence that :

> "It is not to be expected that in every case depending on circumstantial evidence, the whole of the law governing cases of circumstantial evidence should be set out in the judgment. Legal principles are not magic incantation and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.
>
> The crucial link in the chain of circumstances in the present case is the presence of the accused-appellant in his house at the time when the dead body of the deceased was discovered. Once that link snaps, the entire case would have to rest on slender titbits here and there.
>
> The discovery of a blood-stain of the deceased's group (B Group) measuriong 0.5 cms. in diameter on the accused-appellant's pant could be a circumstance against the accused only if it is shown that that was not his blood group. Presence of a dried stain of semen on the underpant of accused, aged 30, is also a circumstance too feeble to establish the guilt. Absence of smegma around the accused's corona glandis cannot by itself prove that he had sexual intercourse. The presence of smegma may perhaps exclude the possibility of recent sexual intercourse but its absence will not necessarily establish that the person has had a recent intercourse. A small abrasion over the base of the glans-penis and its bluish

**discolouration are also inconclusive circumstances. Nor indeed can the bruises on the appellant's thigh establish his involvement in the crime.**

**The circumstance that the total ignorance of the incident pleaded by the accused was false, cannot be said to have itself furnished a link in the chain of causation. Falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused. Moreover, from the facts and circumstances of the case it is clear that the accused was not present in the house at the time when the deceased's dead body was discovered from the accused's house. That makes it impossible that the accused's plea was false."**

27. It will be seen from the judgment that the Supreme Court has while affirming the view as to how appreciation of circumstantial evidence is to be undertaken observed a parameter in which it must be proved beyond reasonable doubt.

28. Then in another judgment delivered again by Chief Justice Shri Y.V.Chandrachud has observed in the decision reported in **(1982) 3 SCC page 462** which is under :

**"Criminal Trial - Circumstantial evidence - Must conclusively lead to the inference that the accused committed the offence of which he is charged:**

**In a case which depends wholly upon circumstantial evidence, the circumstances must be of such a nature as to be capable of**

**supporting the exclusive hypothesis that the accused si guilty of the crime of which he is charged. That is to say, the circumstances relief upon as establishing the involvement of the accused in the crime must clinch the issue of guilt. It is hazardous to base conviction on equivocal circumstances."**

29. It will therefore be necessary for us to re-appreciate the circumstantial evidence in the present case in light of these observations and we will do it only by considering in detail the evidence as re-appreciated by us for examining the rival contentions in this case.

30. P.w.1 Patil is the father of victim Nisha who is an agriculturist and the contractor who is doing substantially well in his life. He has deposed that he married his daughter to Sunil the accused no.1 on 26th May 1997. He then says that accused Sunil asked Nisha to bring money from her parents to discharge the loan taken by him for the purpose of flat. According to this witness such demands for money were frequently made and in April 1998 he paid Rs. 20,000/- by D.D. to Nisha, which draft was realised. The fact of this realisation is corroborated by examining the bank employee where Nisha had an account as P.w.10. He then deposed the illtreatment meted out to Nisha by Sunil and Vikas. He has stated that Sunil frequently told him that he did not like Nisha. According to him, on

one occasion both Sunil and Vikas quarreled with Nisha and drove her out of the house and after mediation from common friends she returned to her home. He then goes to show that accused Rajani mother of Vikas and Sunil when she visited the witness re-iterated the demand of Rs. 50,000/- and told him that the illtreatment of Nisha would continue till the amount is paid.

31. Then what he has stated is liable to be noted in verbatim which is as under:

> *"On 6-6-98 at about 7.30 p.m. I received phone call from Nisha. She was weeping. She told that Vikas was giving threats to kill her and us.* I asked her whether Sunil was *present there, and asked to give him phone. She said yes. However, phone was disconnected. I tried to contact her on phone immediately, but could not contact. Balasaheb Patil my relative resides at Kothrud. I phoned him and told about the telephonic talks with Nisha and asked him to go to her house and see what happened."*

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32. It will thus be seen that around 7.30 p.m. on 6th June P.w.1 father of victim received a telephone from

Nisha who told him that Vikas was threatening her and Sunil was present there in the house and the telephone was disconnected. The effort to contact on phone again failed and therefore he called Balasaheb. P.w. Balasaheb is examined and he says that the call was received at 8.30 by his wife and the wife told him that Nisha is in trouble and Balasaheb should go and find out. Thereafter he went to the spot and discovered that Nisha was injured and informed P.w.1 about it. It is pertinent to note that the witness asserts in his examination-in-chief that he told Balasaheb about the telephone talk and when Balasaheb equally and emphatically says that telephone was received by his wife and he was not in home, it is undoubtedly a contradiction. It is obviously a minor one. But it is something which is required to be noted while we proceed with our re-appreciation of evidence.

33. The witness then says that he received a telephone from Balasaheb in the mid night about the assault of Nisha and the fact that she was in the hospital. He then came to Pune and saw Nisha in critical condition and lodged the complaint in the police station.

34. In this complaint which is exhibited as Exh.30 the witness has stated before the police that he received a

call at 7.30 when she told him that Vikas had come back in the afternoon itself and threatened her. He then proceeds to state in the complaint that he asked Nisha whether Sunil was in the house and she answered in the affirmative. He therefore told her that she should again telephone to Sunil. He then says that he heard the sound of telephone being snatched and Nisha being pushed away and the telephone was disconnected. None of this is deposed by him in his examination-in-chief. He does not say in it that Nisha told him that accused Vikas had come back in the afternoon itself and that he was threatening and that Sunil was present and that he heard the noise of telephone snatching and Nisha being pushed away. This also is a basic omission. We will again assume that it is a minor omission. It's effect will have to be noted as we proceeded further with the re-appreciation of evidence of this man.

35. In Exh.30 this witness has stated that he received a telephone from Balasaheb at one in the night when in chief he says that it was 12 0' clock. Again minor contradiction is to be noted. Then there is a narration of how Nisha was tortured and the complaint ends saying that the daughter was tortured, and injured and killed by Sunil and Vikas against whom a complaint has been lodged. It will thus be seen that then

subsequently accused Sunil and Vikas both could have murdered his daughter as according to the telephone received by him at the time when Nisha was crying and tried to tell him about the illtreatment, both Sunil and Vikas were present in the house. The witness asked Nisha to give telephone to Sunil, on which he heard a sound of telephone being snatched and Nisha being pushed out. The logical conclusion that can be formed from this piece of evidence is therefore that it was either Sunil or Vikas who did that act of snatching the telephone and pushing Nisha away. If this aspect is analysed, it will be seen that according to this witness, he received the telephone call at 7.30 on 6th June on which he was told of threats by Vikas in presence of Sunil and the witness claims to have heard snatching of telephone and pushing away Nisha. The logical conclusion from this evidence therefore has to be that both Sunil and Vikas were present in the house.

36. P.ws 2 and 3 are witnesses who deposed about prior illtreatment. P.w.3 however is the brother of Victim Nisha. He also speaks of illtreatment. He also speaks of payment of Rs. 20,000/- and he also speaks about the telephone call received by Gajanan P.w.1. He however says that he was told by Gajanan P.w.1 the father that " Nisha informed that Vikas was giving

threat and was assaulted her and that the telephone was disconected." P.w.1 has not therefore immediately disclosed regarding snatching of the telephone and regarding pushing of Nisha away and the telephone being disconnected. He does not tell about the presence of Sunil also and the non disclosure of such vital circumstances is a serious omission on the part of p.w.1 which show that possibility of that statement by P.w.1 in his statement in Exh.30, is a positive improvement of the witness. He then says that he was informed by Balasaheb P.w.14 that Nisha was assaulted by accused Vikas and Sunil. P.w.4 is a witness to the seizure of the clothes of the deceased, which were blood stained. In view of the fact that homicidal death of Nisha is proved, this seizure of clothes of the victim loose all significance.

37. Pw 3 Mangesh who is the brother of the victim Nisha, has then deposed that he was present when the call of Nisha was received by her father PW. no.1. Yet he says that he was informed by father that he had called Balasaheb PW 14. If the witness was present when the call was made what was the propriety of saying so. It appears to be a small improvement undoubtedly minor and would therefore be apppreciated during the further analysis of the evidence. This witness also

goes to say that he was told by P.w.14 Balasaheb that Nisha was assaulted by accused Vikas and Sunil. Even, according to this witness, who is the brother of the victim, the assault was by Vikas and Sunil. According to Gajanan P.w.1 when he received the call of Nisha around 7.30 p.m. on 6th June, both Vikas and Sunil was present in the room and the telephone was disconnected after pushing Nisha by either of them. From the evidence of this person, it become obvious that it was either of the two, who has done it. From the evidence of the police, as will be seen hereafter the door was locked and was opened by Sunil by his latch key and Nisha was found inside. Therefore at that time the appellant Vikas was not there. According to P.w.3 Mangesh he was present when call from Nisha was received by P.w.1 Gajanan. Yet Gajanan does not say in his deposition that he told Mangesh about presence of either Sunil or Vikas by Nisha. We will assume that this is a minor omission in not mentioning presence of Mangesh in the house when call from Nisha was received. It is however highly improbable to believe that father receives call from daughter that she is being threatened and harmed by Sunil and Vikas, the son is present in the room and he the father chooses not to tell anything to son regarding the presence of Sunil the husband of the victim to him. However, Mangesh

speaks of Balasaheb informing him that the victim Nisha was assaulted by accused Vikas and Sunil both. Neither Gajanan P.w.1, Mangesh P.w.3 or Balasaheb P.w.14 have told this aspect to police even if they have. There is no such mention of such disclosure in the statement of P.w.20 Chougule the investigating officer before the court. If it is assumed that this was so disclosed, there is no explanation whatever coming forth from the prosecution or investigating officer as to why (1) handwriting of Sunil was not taken, (2) finger print of Sunil was not taken, (3) finger prints of both Vikas and Sunil were not matched with the finger prints available and gathered from the site.

38. Then is the evidence of P.w.5 Laxman who was panch to the spot panchanama who has disclosed that when he entered the flat he saw the telephone instrument removed from the socket. He saw a diary and on which "Mai Vikas khoon karke bhag reha hum" was written and a ball point pen was in the diary. Then he speaks of seizure of blue diary which was maintained by the accused Vikas. The witness categorically states that when he visited the master bed room, there was blood on the wall and on the floor. He specifically states that there were finger prints in the blood on the wall. Yet no attempt is made by the prosecution to use the prints

and prove whose prints they were. Two knives were seized which were blood stained. But no attempt is made by police to verify if they had any finger prints and if any, whose. In the panchanama duly exhibited and proved by this witness as Exh. 38, apart from mention of these things there was also mention of spotting of chocolate coloured spectacles, which accused Sunil is reported to have said as one belonging to Vikas. The panchanama itself mentions regarding seizure of a blue diary and it says that this diary is written in English and the handwriting is that of Vikas. Then it mentions seizure of a chocolate coloured spectacle. But it is said to belong to Nisha the victim. Then there is seizure of a note book carrying name of Vikas and in it Hindi and English writings are found in the handwriting of Vikas. Apart from the samples of writing taken from the accused Vikas there was thus ample material on record intrinsically found on the scene of offence and seized by police. Yet no attempt is made to compare the Hindi handwriting of Vikas in the book with the alleged statement "mai Vikas khoon karake bhag rehan hum".

39. P.w.6 Rajendra is a witness to the arrest of the accused Vikas. He speaks of Vikas having injury on his right knee which is nowhere explained. The panchanama

of arrest does not anywhere make a mention of any blood stain on the clothes of Vikas. According to the prosecution, Vikas was in town and was residing in the same flat where the incident occurred and was not seen till his arrest. Yet it is not explained by the prosecution as to how the clothes of Vikas were not stained with blood when the blood was scattered sufficiently all over the flat. The alleged statement of Vikas that he would recover the clothes hidden by him in Nashik also resulted in nothing as nothing was recovered from the spot shown by Vikas. It therefore further goes to show that Vikas has not hidden anything at Nashik. There is no evidence as to how Vikas remained with unstained clothes on him when he was arrested on the next day.

40. P.w.7 Shitole is a witness to the collection of specimen writing from Vikas. P.w.8 Baban is the witness to the seizure of clothes from the accused persons. He has proved the seizure panchanama which is Exh.74. It mentions that three accused persons in Crime No.253 were arrested and their arrest panchanama etc. was to be recorded and therefore he was requested to remain present as a panch. The name of accused persons was Sunil son of Ramdas, Ramdas son of Kharnar Patil and Rajani wife of Ramdas. The panchanama then

proceeds to say that the clothes worn by Sunil son of Ramdas had blood stains and the blood stained shirt was recovered by the panchanama. It will thus be seen that the clothes with blood stains were of accused No.1 Sunil and not of accused No.2 Vikas. There is no explanation whatever by the prosecution as to how it was Vikas and not Sunil who committed the offence.

41. P.w.9 Surekha is the mother of victim Nisha. Her evidence is inconsequential. P.w.10 Anthony is a bank official, who speaks of the account of Nisha. P.w.11 Dr. Rajendra is the doctor who conducted the post mortem. He has described all the injuries and has opined that because of the injuries victim died. He thus proved the homicidal death of Nisha.

42. P.w.12 Kumar Deshmukh is an employee of telephone department and at the relevant time was serving as Sub Divisional Engineer at Karvenagar Exchange in Pune. He has deposed about the telephone calls from the number in the flat of Sunil and Nisha. According to him at 19.35 hours a call was made from that telephone to Jalgoan, calling No. 27883 and the call lasted for 172 seconds i.e. approximately three minutes. Then he states that around 19.40 hours a call was made from the same number to Bhusaval and the call no. was 25034.

The duration of the call was 101 seconds i.e. approximately less than two minutes. According to this witness except these two calls, no other calls were made from the number. The call at Jalgaon obviously is to P.w.1 and the call at Bhusaval is to the defence witness who says that he heard Nisha saying on the telephone that she was assaulted by unknown armed persons. They were made in the duration of five minutes and if Nisha five minutes earlier told her father P.w.1 Gajanan that Vikas was threatening her and Sunil was present and again after five minutes, the telephone to Bhusaval was disconnected as deposed to by P.w.1 is wrong. The disconnection and disruption of the wire from the socket has taken place after Bhusaval call was established. The witness has categorically deposed that in view of the subsequent call to Bhusaval it can be said that the telephone was working at 19.40 hours and he himself has stated earlier that a call to Jalgaon was made at 19.35 hours. Therefore the telephone was working when the call as is alleged to have been made that she was threatened by accused and then the telephone was disconnected and again a call was made to Bhusaval where it was said that she is being assaulted by unknown persons. This circumstance is to be appreciated with the attending circumstances namely running around of the victim in the house,

finding of blood stains at various places in the house, disconnection of the telephone, user of two knives and severe injury caused to the victim, all these cannot be a work of one individual.

43. Then comes the evidence of P.w.13 hand writing expert. No doubt he has deposed that the handwriting "mai Vikas khoon karke bhag rehan hum" is that of Vikas. He however has accepted that though enlargement of the writing was obtained by him, the comparison of the same has not supplied. He has not answered the query as to why handwriting was not compared with other admitted writing of Vikas. A submission was placed by Shri V.R.Manohar on various judgments of this court and the Supreme court pointing out that the evidence of an expert is weakest. Reference in the circumstances can be made to one such judgment of Supreme Court reported in **AIR 1964 S.C. page 529.** A constitutional Bench of Supreme Court of India has observed that: " the expert's evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence." Then in **AIR 1977 S.C. 1091** a Division Bench of Supreme Court of India observed:

> *"It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This type of evidence being as evidence is of every nature we can form basis for conviction."*

44. The learned trial Judge while accepting the evidence of the prosecution to come to the conclusion that it is Vikas who has committed murder as done here, has relied solely on the testimony of this witness who is an expert without there being any corroboration of any kind on record. In fact ample corroboration or other evidence could have been obtained by the prosecution as undisputed admitted handwriting of accused were on record. The fair failure of the prosecution to bring such corroborative evidence, does deprive the prosecution from claiming confirmation of the conviction as recorded by the trial Judge, when no circumstantial evidence is forthcoming. It is pertinent to note at this stage that P.w.16 was examined as a witness by the prosecution and is the brother of the accused, who has categorically stated that the handwriting "mai khoon kar ke bhang rehen hum" is not that of Vikas. This evidence is rejected because the witness has turned hostile. But the fact remains that there was ample admitted evidence on

record that the handwriting of Vikas in Hindi which could have been tested for corroborating the testimony of P.w.13.

45. According to the Supreme Court therefore it is unsafe to base a conviction solely on the expert's opinion and this rule has been universally acted upon and it has almost become a rule of law. This rule of law was ignored by the learned trial Judge while recording conviction of accused Vikas only relying on the testimony of P.w.13 only, without there being any other corroborative evidence particularly when the prosecution had ample opportunities to bring such evidence.

46. It is this set of evidence wholely circumstantial which we have to consider to determine whether the conviction of the appellant Vikas by the learned Judge in the circumstances, is justified when he has chosn to acquit three others on the same set of evidence. The reasoning given by the learned Judge for not convicting any of the accused persons particularly accused Sunil is that Sunil was the person who complained of the incident, Sunil was the person who opened the door with his latch key along with police and the body was discovered and therefore it is not likely that Sunil

has done it. Heavy reliance is placed on the evidence of finger print and handwriting expert P.w.13. Infact in our opinion, the conviction is solely based on the evidence of this witness P.w.13. We have already pointed out above from the decisions of Supreme Court of India, how the evidence of expert is a weakest form of evidence and how unsafe it is, to rely solely such evidence without there being any other evidence to corroborate the same.

47. From the aforesaid appreciaition of evidence the prosecution has proved the following things.

*1) That Nisha met homicidal death.*

*2) That the homicidal death was caused by instruments like knives.*

*3) That the injuries found on the person of the victim were sufficient in the ordinary course of nature to cause death.*

*4) That there were blood stains all over the house.*

*5) That there were finger print/palm prints in blood found in the house and were lifted by the experts.*

*6) That Sunil and his family members had made demands for dowry in the past.*

*7) That the victim Nisha was sometimes harassed by accused persons on the issue of dowry demands.*

*8) That Vikas was unhappy and discontent with the manner of cooking and general behaviour of Nisha in the family.*

*9) That according to P.w.13 the handwriting*

*and finger print expert the writing "mai Vikas Khoon karke bhag rahen hum" was in the hands of Vikas.*

On the basis of these circumstances, on which the learned trial Judge putting heavy reliance on the expert's evidence regarding handwriting, has chosen to convict accused no.2. Vikas and has acquitted the rest of three accused of all the charges.

48. We will now note what the prosecution has failed to prove though it had means to prove it:

*1) That Vikas was in the vicinity of the house after 9.30 a.m. on 6th when it is proved on record by the prosecution that he was in the college seeking certificate from the authority to secure admission in the hostel between 11 a.m. and 1 p.m. on that day.*

*2) There is evidence on record that the accused was in Bhusaval in the morning of 7th immediately thereafter.*

*3) From the evidence of P.w.1 it is obvious, if it is accepted that at 7.30 in the evening of 6th June Vikas was in the house. According to Nisha the victim when telephone call was made and when she said that she has been threatened and harassed by Vikas, Sunil was present, presence of Sunil at 7.30 in the house is thus required to be accepted, if the deposition of P.w.1 Gajanan is to be accepted and if it is so accepted, the prosecution has failed to prove that none of the finger prints found on the scene of offence belonged to Sunil.*

*4) The prosecution has proved that the clothes of Sunil had blood stains on it.*

*5) The prosecution has proved that Sunil's family was harassing victim Nisha for dowry demands. Sunil therefore, according to the prosecution, had along with other members of his family harassed Nisha and yet no attempt whatsoever is made to exclude participation of Sunil by cogent evidence. Everything appearing against all other accused is brushed aside by the learned trial Judge, giving undue weightage to the evidence of P.w.13 the handwriting expert. The learned trial Judge has at several places observed that there are flaws in the evidence of prosecution, but has not given any reason why those flaws are liable to be ignored.*

49. In our opinion, in such circumstances the prosecution has failed to prove all the circumstances in the chain of circumstances so that it can be called a complete chain of circumstances, justifying the conviction of Vikas alone. In our opinion, even if this entire evidence is accepted, the prosecution has failed to prove that Vikas the appellant was in the vicinity of the house in the evening of 6th June, that the handwriting was his, it has failed to prove as to why Vikas would choose to write only that sentence in Hindi when the language he used is Marathi and English. The prosecution has failed to prove by analysing and examining admitted handwriting of Vikas on record for example note book and the blue diary, which would have been independent evidence to corroborate the opinion of P.w.13 in relation to admitted handwriting taken in the presence of the police. Failure on the part of the police to so corroborated, the expert's evidence which

in its nature week evidence, is in our opinion fatal error committed by the prosecution. Full acceptance of those circumstances, which we have observed as proved above, cannot lead to a conclusion that homicidal death of Nisha was caused by Vikas and none else. That it was not caused by anybody else including Sunil, cannot be said with any certainty in the face of the evidence on record in the shape of discovery of the body by Sunil, presence of blood stains on the clothes of Sunil, presence of Sunil in the house at 7.30 when Nisha had called her father. There is no explanation nor plausible and reasonable in the judgment impugned as to why these circumstances were ignored or were found insufficient by the learned Judge. However nothing can be said in this aspect since the State has not filed any appeal in the acquittal of Sunil.

50. The Supreme Court has observed in 2003 decision quoted above, quoted with approval the decision in Sharad's case AIR 1984 SC page 1652 and have quoted conditions precedent to sustain the conviction based on such circumstantial evidence. They are stated in **AIR 2003 SC 3601,** particular page is 3606, they are:

> *1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established.*

> *2) The facts so established, should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explanable on any other hypothesis except that the accused is guilty.*
>
> *3) The circumstances should be of a conclusive nature and tendency.*
>
> *4) They should exclude every possible hypothesis except the one to be proved: and*
>
> *5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

51. We have noted above the circumstances which the prosecution has proved. On appreciation of evidence, it cannot be said that the circumstances proved are such that they fully established the conclusion of guilt to use the words of the Supreme Court. The maximum that can be said from the circumstances proved is that the accused Vikas is concerned, in the same manner, to the torture or harassment to Nisha and nothing more.

52. The Supreme Court then says that the facts must be so established and must be such as are consistent with the hypothesis of the guilt of the accused i.e. Vikas in the present case.

53. In our considered opinion therefore these circum-staces, though raise following reasonable doubts as to whether the death of Nisha was caused by Sunil or Vikas when the motive was more stronger for Sunil to do so, than Vikas, who only had grudge against the pheripherial behaviour of Nisha with him for serving bad food though for using bad gough, an educated man would not go to the extreme of committing murder. The evidence of the college official who gave certificate to the appellant Vikas states that Vikas had bag with him which strengthen the defence statement that Vikas wanted to leave immediately. Infact the attempt by the prosecution to prove recovery of shirt from Nashik at the instance of Vikas proves beyond doubt that Vikas was in Nashik and nothing was discovered. The possibility of Vikas not being in Pune after 1 p.m. on 6th cannot therefore be overruled. It cannot be said with any certainty that he was not out of Pune it cannot be said with any certainty nthat he was in the vicinity of the place where the crime occured and all these circumstances do raise serious reasonable doubt as to who killed Nisha. This doubt, in our opinion, arises out of the circumstances which have been established by the prosecution, has raised out the failure of the prosecution to investigate properly the matters enumerated. It is therefore a doubt which can

arise in the mind of a reasonable prudent man , in our mind. It cannot be said to be a fancy of our imagination but is soundly based on the evidence as established on record. Consequently we are firmly of the view that the benefit of such doubtful situation must go to the accused. We therefore feel particularly because the learned trial Judge on appreciation of this very evidence has concluded that Sunil was not the person who committed the crime. The only reason for choosing Vikas as the only culprit being the evidence of P.w.13 which is the weakest piece of evidence and which according to the Supreme Court of India is grossly inadequate and it is very unsafe to rely on such set of evidence for recording order of conviction. We would like to reproduce again the views of the Supreme Court in this regard. In **AIR 1977 S.C. 1091** a Division Bench of Supreme Court of India observed:

> *"It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This type of evidence being as evidence is of every nature we can form basis for conviction."*

54. Following this rule of law we, therefore hold that the learned Judge errerd in convicting Vikas for murder of Nisha.

55. The entire case law on this point of handwriting expert's evidence was considered by the Honourable Single Bench of this Court in Abdul Mutalik Vs. Smt. Khubai reported in **2005(I) ALL MR 593** where it is observed that expert's opinion is the weakest possible evidence regarding proof of handwriting or signature and then it is observed by following AIR 1964 SC 529 quoted above as to what is the value of such expert's evidence. The observations of the learned Judge reads thus:

> **(D) Evidence Act (1872) Ss.3, 454- Appreciation of evidence - Expert's evidence - Evidence as to handwriting - held expert opinion is the weakest possible evidence regarding proof of handwriting or signature."**
>
> **Expert's evidence as to Handwriting is opinion evidence and it can rarely take the place of substantive evidence. Before acting on such evidence it is usual to see, if it is corroborated either by clear direct evidence or by circumstantial evidence.**
>
> **The evidence regarding handwriting can be arranged in following order on the strength of its reliability.**
>
> **1. Author himself stating that it is his handwriting or signature.**
>
> **2. Person who has seen the author doing particular writing or signature, stating that particular person has scribed document or signature.**

**3. Person who is acquainted with handwriting of purported author, and**

**4. Expert's opinion.**

**Thus expert opinion is the weakest possible evidence regarding proof of handwriting or signature. AIR 1964 SC 529 - followed.**

56. We are in respectful agreement with the observations made by the learned Judge. As the same are completely culled out from various jdugments of the Supreme Court noted by the learned Judge, which is cited before us by the learned counsel for the appellant. We have already observed that diary admittedly in the handwriting of Vikas in Hindi was seized by the police, writing of Vikas admitted by everybody was that with the police and yet no attempts were made to compare that handwriting with the disputed one, expert handwriting obtained from Vikas for the purposes of examination. In our opinion, this is a major lacuna left by the prosecution in conducting the investigation and leading of evidence in this case. This aspect assumes importance in view of the fact that all relations of Victim were arrayed as accused, accused Sunil was the person who discovered the dead body, it was he who opened the door, it was his clothes which were having blood stains, it was he who says that the handwriting was of Vikas, it was he who pointed out to the police the diary and his evidence is rejected by

the learned trial Judge solely on the basis of the testimony given by P.w.13 that the handwriting is of Vikas. The learned Judge chooses to rely on the solitary evidence which may be substantial in nature in convicting the accused and chose to acquit the others. There being no appeal against acquittal of Sunil we refrain ourselves from making any other observations in this regard except for saying that the entire evidence raises reasonable doubt in the mind of any ordinary prudent reasonable man, also whether the assault on Nisha was the sole handwork of Vikas or whether Sunil was the author who made Vikas the scapegoat. In the face of such evidence established on record, we find it unsafe to sustain the conviction of Vikas alone.

57. In the result, therefore, the appeal succeeds and is allowed. The accused be set at liberty forthwith if not otherwise required.

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